

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1323.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 4, 2011.

[R12-90]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action:**
R9-22-204 Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 36-2903.01
Implementing statute: A.R.S. § 36-2907 as amended by Laws 2011, Ch. 31, § 13 ("the 2011 Act")
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Proposed Exempt Rulemaking: 17 A.A.R. 1290, July 15, 2011
Notice of Exempt Rulemaking: 17 A.A.R. 1707, August 29, 2011
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative and Legal Services
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
The Governor's Medicaid Reform Plan, as announced on March 15, 2011, includes proposals to reduce nonfederal expenditures for the AHCCCS program by approximately \$500 million during state fiscal year 2012. To achieve some of these reductions, the AHCCCS Administration promulgated limitations to covered inpatient days for adults and within these limitations there were exceptions, such as hospitalizations due to severe burns. This rulemaking was effective October 1, 2011. Based on comments obtained from the Center of Medicare and Medicaid Services during the State Plan approval process, the Administration is proposing a clarification to the description of the exception of hospitalizations due to severe burns.

Burn center verification, a joint program of the American Burn Association and the American College of Surgeons, is designed to ensure provision of optimal care to burn patients from the time of injury through rehabilitation. In order to receive this distinction of high quality patient care, the provider participates in a rigorous review process, including

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an in depth site visit followed by a written report. It is likely that burn victims requiring in excess of 25 days of inpatient treatment would be transferred to an ACS verified burn center.

- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were relied upon for the implementation of this rulemaking.

- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

The AHCCCS Administration does not anticipate an economic impact as a result of this clarification from what was described within the economic impact statement within the Notice of Exempt Rulemaking promulgated effective October 1, 2011. See item 3 for publication information.

- 9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative and Legal Services
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov

- 10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Please submit comments by mail or e-mail to the contact person above. The public comment period closes at 5:00 p.m. on June 18, 2012.

- 11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

- 12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

- 13. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICES

Section
R9-22-204. Inpatient General Hospital Services

ARTICLE 2. SCOPE OF SERVICES

R9-22-204. Inpatient General Hospital Services

- A. A contractor, fee-for-service provider or noncontracting provider shall render inpatient general hospital services including:
1. Hospital accommodations and appropriate staffing, supplies, equipment, and services for:
 - a. Maternity care, including labor, delivery, and recovery room, birthing center, and newborn nursery;
 - b. Neonatal intensive care unit (NICU);
 - c. Intensive care unit (ICU);
 - d. Surgery, including surgery room and recovery room;
 - e. Nursery and related services;
 - f. Routine care; and
 - g. Emergency behavioral health services provided under Article 12 of this Chapter for a member eligible under A.R.S. § 36-2901(6)(a).
 2. Ancillary services as specified by the Director and included in contract:
 - a. Laboratory services;
 - b. Radiological and medical imaging services;
 - c. Anesthesiology services;
 - d. Rehabilitation services;
 - e. Pharmaceutical services and prescription drugs;
 - f. Respiratory therapy;
 - g. Blood and blood derivatives; and
 - h. Central supply items, appliances, and equipment that are not ordinarily furnished to all patients and customarily reimbursed as ancillary services.
- B. The following limitations apply to inpatient general hospital services that are provided by FFS providers.
1. Providers shall obtain prior authorization from the Administration for the following inpatient hospital services:
 - a. Nonemergency and elective admission, including psychiatric hospitalization;
 - b. Elective surgery, excluding a voluntary sterilization procedure. Voluntary sterilization procedure does not require prior authorization; and
 - c. Services or items provided to cosmetically reconstruct or improve personal appearance after an illness or injury.
 2. The Administration may perform concurrent review for hospitalizations to determine whether there is medical necessity for the hospitalization.
 - a. A provider shall notify the Administration no later than the fourth day of hospitalization after an emergency admission or no later than the second day after an intensive care unit admission so that the Administration may initiate concurrent review of the hospitalization.
 - b. Failure of the provider to obtain prior authorization is cause for denial of a claim.
- C. Coverage of in-state and out-of-state inpatient hospital services is limited to 25 days per benefit year for members age 21 and older. The limit applies for all inpatient hospital services with dates of service during the benefit year regardless of whether the member is enrolled in Fee for Service, is enrolled with one or more contractors, or both, during the benefit year.
1. For purposes of calculating the limit:
 - a. Inpatient days are counted towards the limit if paid in whole or part by the Administration or a contractor;
 - b. Inpatient days will be counted toward the limit in the order of the adjudication date of a paid claim;
 - c. Paid inpatient days are allocated to the benefit year in which the date of service occurs;
 - d. Each 24 hours of paid observation services is counted as one inpatient day if the patient is not admitted to the same hospital directly following the observation services,
 - e. Observation services, which are directly followed by an inpatient admission to the same hospital are not counted towards the inpatient limit; and
 - f. After 25 days of inpatient hospital services have been paid as provided for in this rule:
 - i. Outpatient services that are directly followed by an inpatient admission to the same hospital, including observation services, are not covered.
 - ii. Continuous periods of observation services of less than 24 hours that are not directly followed by an inpatient admission to the same hospital are covered.
 - iii. For continuous periods of observation services of 24 hours or more that are not directly followed by an inpatient admission to the same hospital, 23 hours of observations services are covered.
 2. The following inpatient days are not included in the inpatient hospital limitation described in this rule:
 - a. Days reimbursed under specialty contracts between AHCCCS and a transplant facility that are included within the component pricing referred to in the contract;
 - b. Days related to Behavioral Health;

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matched tribal gaming funds between hospitals providing trauma services and urban and rural hospitals providing emergency services.

Proposition 202 established A.R.S. § 36-2903.07 which appropriates tribal gaming funds for the purpose of making supplemental payments to Arizona hospitals for the cost of unrecovered trauma and emergency services. Historically these funds have provided approximately \$20 million with 90% of the funds paid to six trauma facilities and the remaining 10% spread among dozens of hospitals for uncovered emergency department costs. To date, federal matching funds through the Medicaid program have not been available for these supplemental payments for trauma and emergency services because the proposed payments are intended to cover costs for care unassociated with Medicaid eligible persons. In general, under 42 U.S.C. 1396b, federal financial participation in the state's expenditure for medical coverage under Title XIX of the Social Security Act (Medicaid) is limited to expenditures for services covered under 42 U.S.C. 1396d for persons eligible under 42 U.S.C. 1396a. However, the Secretary of the United States Department of Health and Human Services (who oversees the federal Medicaid program) has the authority under 42 U.S.C. 1315 to allow the state to claim federal financial participation for expenditures not explicitly listed in the Medicaid Act so long as the expenditure, "in the judgment of the Secretary, is likely to assist in promoting the objectives of title XIX." On April 6, the Secretary, under the authority of 42 U.S.C. 1315, approved an amendment to the Arizona Demonstration Project that permits Arizona to claim federal financial participation for supplemental payments to hospitals for the unrecovered cost of trauma and emergency services. See, <http://www.azahcccs.gov/reporting/federal/waiver.aspx>.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were relied upon for the implementation of this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Not applicable

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative and Legal Services
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Comments or request for an oral proceeding may be submitted to the contact person listed above by close of the comment period of June 18, 2012 5:00 p.m.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Laws 2011, Ch. 31, § 34 authorizes the Administration to adopt rules necessary to implement the AHCCCS program within the available appropriations and exempts the Administration from the formal rulemaking requirements of A.R.S. Title 41, Chapter 6.

Laws 2011, Ch. 31, § 34, requires public notice with an opportunity for public comment of at least 30 days. Public notice of this rulemaking will be accomplished through publication of this rulemaking on the agency web site. A supplemental notice will also appear in the *Arizona Administrative Register* in advance of the close of the comment period. In addition, notice was directed to those individuals who, prior to this proposed rulemaking have notified the agency of their desire to receive such notices directly pursuant to A.R.S. § 36-2903.01(B)(6).

Laws 2012, Ch. 299, § 23 authorizes the AHCCCS Administration to apply for and receive additional federal financial participation from CMS for trauma centers, emergency departments and rural hospitals in this state until January,

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1, 2014. In addition, that section exempts the AHCCCS Administration from the rulemaking requirements of A.R.S. Title 41, Chapter 6 until October 1, 2012.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

Section

R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services

R9-22-2104. Additional Trauma and Emergency Services Payments under the Section 1115 Waiver

ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services

On or after June 30 of each year, the Administration shall distribute monies available in the trauma and emergency services fund at the time of payment as follows:

1. As allocated under R9-22-2101(C),
2. To hospitals that had an emergency department from July 1 through June 30 of the prior year, and
3. On a pro rata share of each hospital's cost of uncompensated emergency care as a percentage of the total statewide cost of uncompensated emergency care provided by hospitals under subsection (2) as reported in the uniform accounting reports to the Arizona Department of Health Services under A.R.S. § 36-125.04.

R9-22-2104. Additional Trauma and Emergency Services Payments under the Section 1115 Waiver

- A.** Notwithstanding R9-22-2101(D), for the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the balance of the Trauma and Emergency Services fund in the following manner:
1. Ninety percent of the amount shall be distributed to Level I trauma centers based upon each center's pro rata share of each center's acuity-adjusted volume as a percentage of the total acuity-adjusted volume for all centers in the state. The acuity-adjusted volume is calculated by multiplying the Injury Severity Score employed by trauma.org by the number of trauma cases at that level treated at the center during the reporting year. Hospitals shall report trauma scores and case volume on a worksheet prescribed by the Administration.
 2. Ten percent of the amount shall be distributed proportionately to hospitals that had an emergency department from July 1 through June 30 of the reporting year based the pro rata share of each hospital's cost of emergency care as a percentage of the total statewide cost of emergency care provided by hospitals as reported on the Worksheet B, column 0, line 61 of the hospital's most current Medicare Cost Report as of January 31 following the end of each reporting year.
- B.** For the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the federal financial participation made available under the section 1115 waiver for the purpose of making payments for unrecovered trauma and emergency services as follows:
1. Thirty percent of such funds to a Level I trauma center, in amounts calculated in the same manner as described in subsection (A)(1) of this Section, for any unrecovered trauma center readiness costs not reimbursed under subsection (A) of this Section;
 2. Thirty percent of such funds to a hospital having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsection (A) of this Section; and
 3. Forty percent of such funds to rural hospitals, as defined in R9-22-718 that are not Level I trauma centers as defined in R9-22-2101(F), having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsections (A) and (B)(2) of this Section.
- C.** For the reporting years ending June 30, 2011 and June 30, 2012, payments made under this Article shall not be made in an amount that results in aggregate payments to the hospital by the Administration and contractors exceeding of the upper payment limit for the hospital services as calculated in accordance with 42 CFR 447.
- D.** For the reporting years ending June 30, 2011 and June 30, 2012, to ensure compliance with subsection (C), payments under this Article shall be reconciled to the federal fiscal year that is two years subsequent to the payment.

- E. Any payments that are determined under subsection (D) to exceed the limit in subsection (C) shall be distributed as described in this Article to hospitals that have not received payments in excess of the limit in subsection (C).

NOTICE OF EXEMPT RULEMAKING

TITLE 19. ALCOHOL, DOG AND HORSE RACING, LOTTERY AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

Editor's Note: The following Notice of Exempt Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1323.)

[R12-88]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action:**
R19-2-205 Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**
Authorizing statute: A.R.S. § 5-104(A)(2), Laws 2011, Ch. 35, § 10(B)
Implementing statute: A.R.S. §§ 5-104(F), 5-104(R), 5-113.01, 5-230
- 3. The effective date of the rule and the agency's reason it selected the effective date:**
July 1, 2012
- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**
None
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: William J. Walsh
Address: Arizona Department of Racing
1110 W. Washington St., Suite 260
Phoenix, AZ 85007
Telephone: (602) 264-1725
Fax: (602) 364-1703
E-mail: bwalsh@azracing.gov
Web site: www.azracing.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
The Department of Racing is initiating this exempt rulemaking to comply with the requirement that the Department collect fees in an amount to support the Department's mission under the requirements of Laws 2011, Ch. 35, § 10(B).
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact, if applicable:**
The rules, developed because of legislative action to remove the agency from the general fund over a two-year period, will cause industry stakeholders to fully fund the operations of the Department in FY 2013 and years thereafter.
- 10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**
Not applicable

Notices of Exempt Rulemaking

- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**
None have been received.
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**
- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
Not applicable
 - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
Not applicable
 - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**
None submitted
- 13. A list of any incorporated by reference material and its location in the rule:**
None
- 14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**
Not applicable
- 15. The full text of the rules follows:**

TITLE 19. ALCOHOL, DOG AND HORSE RACING, LOTTERY AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 2. RACING REGULATION FUND

Section
R19-2-205. Regulatory Wagering Assessment of Pari-mutuel Pools

ARTICLE 2. RACING REGULATION FUND

Rule19-2-205. Regulatory Wagering Assessment of Pari-mutuel Pools

- A. No change
- B. The racing regulation assessment for each racing meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wagers types shall be 0.375 percent through June 30, 2012. Beginning July 2, 2012 the regulatory wagering assessment shall be one percent.
- C. No change
- D. No change